

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

BRUCE CHAPMAN and HANDLE WITH CARE
BEHAVIOR MANAGEMENT SYSTEM, INC.,

Plaintiffs,

-v-

1:04-CV-867

NEW YORK STATE DIVISION FOR YOUTH, et al.

Defendants.

UNITED STATES ex rel. BRUCE CHAPMAN,

Plaintiff,

v.

1:04-CV-1505

OFFICE OF CHILDREN AND FAMILY SERVICES
OF THE STATE OF NEW YORK, et al.,

Defendants.

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DAVID N. HURD
United States District Judge

DECISION and ORDER

On July 5, 2010, plaintiffs filed motions to recuse in the above-captioned related cases pursuant to 28 U.S.C. § 455(a). The State defendants and the Cornell defendants opposed. The motion was taken on submission without oral argument.

A United States judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The party seeking recusal has the burden of demonstrating "an 'objectively reasonable basis for questioning a judge's impartiality.'" Jemzura v. Pub. Serv. Comm'n, 961 F. Supp. 406, 410 (N.D.N.Y. 1997) (McAvoy, C.J.)

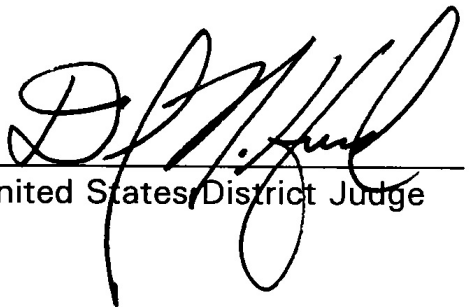
(quoting In re I.B.M. Corp., 45 F.3d 641, 644 (2d Cir. 1995)). Recusal is appropriate only where "a reasonable person, knowing all the facts, [would] conclude that the trial judge's impartiality could reasonably be questioned." Id. (quoting U.S. v. Lovaglia, 954 F.2d 811 (2d Cir. 1992)). Recusal cannot be based upon rulings of the court, but rather, upon extrajudicial matters. Id. at 411. Moreover, there is an obligation to refrain from recusal where grounds for doing so do not exist. Local 338, RWDSU v. Trade Fair Supermarkets, 455 F. Supp. 2d 143, 145 (E.D.N.Y. 2006).

Upon careful consideration of the assertions and arguments of the parties, plaintiffs have failed to meet their burden of establishing that there is a basis for recusal.

Accordingly, it is

ORDERED that plaintiffs' motion for recusal is DENIED.

IT IS SO ORDERED.


United States District Judge

Dated: August 24, 2010
Utica, New York.